WOUNDED WORKERS: BEAT UP & FOUGHT OVER

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PREMISE I

- The Workers' Compensation system works reasonably well for accepted injuries involving a single D.O.I. & one body part.

PREMISE II

- For workers with complex injuries:
  - Treatment is often contested & delayed
  - T.D. benefits frequently expire before M.M.I. is achieved
  - Voc Rehab options are limited
  - P.D. & Apportionment are hotly contested.

PREMISE III

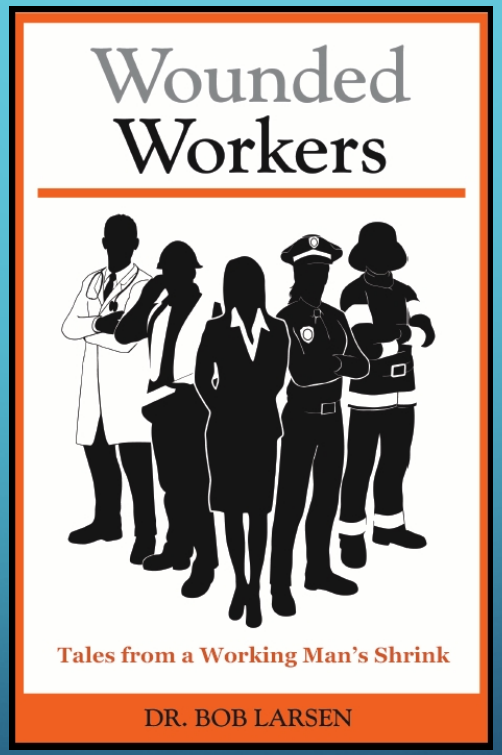
- THERE IS NO SUCH THING AS A SIMPLE PSYCHIATRIC CLAIM.

INTRODUCTORY QUESTION

- Can we all admit we find combined physical & mental claims to be:
  - FRUSTRATING
  - CONFUSING
  - COMPLICATED
  - ANNOYING
  - ALL OF THE ABOVE.

WHAT DOES NOT KILL ME MAKES ME STRONGER

Battalion Chief with near death experience, multiple injuries, PTSD & violent fantasies.



COMPENSABILITY OF PSYCH CLAIMS

- A. Causation threshold has increased over time from 1% to 10% to 51%, Predominant Cause.
- B. Injuries due to violent acts require only Substantial Cause (35-40%).
- C. No C.T. stress claims in first six months of employment.
- D. No compensability for lawful, non-discriminatory personnel actions that represent a substantial cause.

MEASURING PSYCHIATRIC DISABILITY/IMPAIRMENT

- 1978 PRDS:
  - VERY SLIGHT
  - SLIGHT
  - MODERATE
  - SEVERE
  - PRONOUNCED.

1997 PDRS
WORK FUNCTIONS/ABILITIES

- COMPREHEND & FOLLOW INSTRUCTIONS
- PERFORM SIMPLE TASKS
- MAINTAIN A WORK PACE
- PERFORM COMPLEX & VARIED TASKS
- RELATE TO OTHER PEOPLE
- INFLUENCE PEOPLE
- MAKE DECISIONS WITHOUT SUPERVISION
- REPONSIBLE FOR DIRECTION, CONTROL & PLANNING.

2005 PDRS USES GLOBAL ASSESSMENT OF FUNCTIONING (GAF)

- DESIGNED TO BE QUICK MEASURE FOR USE IN VARIOUS CLINICAL SETTINGS, ACROSS ALL FORMS OF MENTAL DISORDERS.
- USEFUL AS RESEARCH TOOL.
- SIMPLE BUT NOT ELEGANT.
- CONSIDERS SYMPTOMS & FUNCTIONING; OPT FOR LOWER SCORE.
- NEVER INTENDED TO MEASURE DISABILITY.
- WPI CORRELATES DEVELOPED WITHOUT CLINICAL INPUT.

MULTIAXIAL PSYCHIATRIC ASSESSMENT, DSM-IV

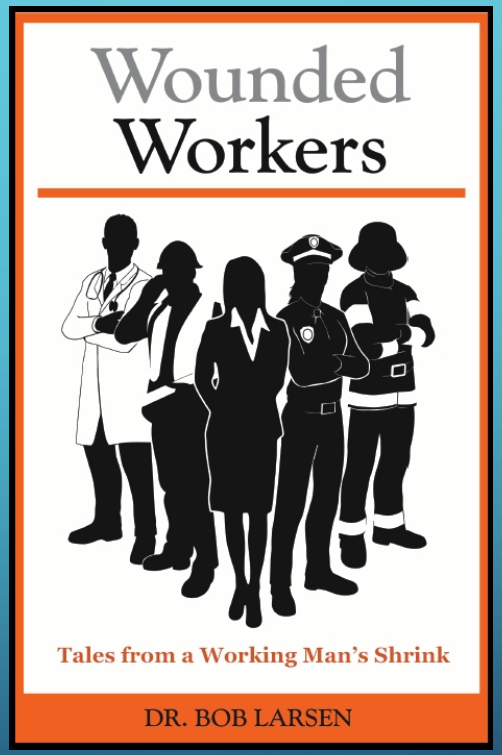
- Axis I: Clinical Disorders, e.g. Mood, Anxiety & Factitious Disorders
- Axis II: Personality Disorders & traits, e.g. Paranoid, Antisocial, Narcissistic
- Axis III: Medical Conditions: e.g. Infections, Neoplasms, M/S Diseases
- Axis IV: Psychosocial Stressors: e.g. Legal, Financial, Familial, Occupational
- Axis V: Global Assessment of Functioning (GAF) Scale

GAF SCALE

- 100-91: Superior functioning, no symptoms.
- 90-81: Minimal symptoms, good functioning.
- 80-71: Transient symptoms, slight impairment.
- 70-61: Mild symptoms, some difficulty in functioning.
- 60-51: Moderate symptoms; moderate impairment.
- 50-41: Serious symptoms, serious impairment.
- 40-31: Impaired reality testing, major impairment.
- 30-21: Behavior influenced by delusions, serious impairment.
- 20-11: Danger of self-harm; gross impairment.
- 10 - 1: Danger of severe harm to self/others, inability to maintain hygiene.

IS HE BELIEVABLE?

Salesman with history of MVA, migratory pain, memory loss, pseudoparalysis & probable factitous disorder.



EVOLUTION OF GAF

- Health-Sickness Rating Scale, 0-100 scale, Luborsky, 1962.
- Global Assessment Scale (GAS), Endicott & Spitzer, 1976.
- Global Assessment of Functioning (GAF) Scale, DSM-III-R, 1987.
- GAF Remains in DSM-IV, 1994.
- Adopted by California for PRDS, 2005. DR. BOB ADVISED AGAINST SUCH.
- GAF Removed from DSM-5, 2013.

DR. BOB'S ASSESSMENT OF GAF

- INTER-RATER RELIABILTY FOR ASSESSING IMPAIRMENT IS MEDIOCRE.
- MOST OF GAF SCALE DOESN'T APPLY TO W.C. POPULATION.
- GAF GIVES MINIMAL INFORMATION USEFUL FOR VOC REHAB.
- SAME GAF SCORE APPLICABLE TO MARKEDLY DIVERSE CASES.

GAF SCORES & WPI

- 70 + = 0%
- 60 = 15%
- 50 = 30%
- 40 = 51%
- 30 = 70%
- 20 = 77%
- 10 = 84%
- 1 = 90%

GAF SCORE OF 60 RESULTING IN 15% WPI

- Bank teller with PTSD after armed robbery; no physical injury or psych hx.
- Construction laborer with initial episode of depression; s/p fall & lumbar fusion.
- Chronic schizophrenic parking lot attendant; s/p ACL reconstruction following pothole incident.
- Administrative assistant with likely psychogenic pain; s/p bilateral CTS repair resulting in NCVs WNL, unrelenting UE pain & give way weakness.

WORDS OF WISDOM FROM DR. BOB

- GAF is of some utility, yet is suspect as a reliable quantitative measure.
- Rely upon the description of activities affected & level of emotional sx reported by psych AME/QME.
- Ask if psych AME/QME's GAF assessment includes/excludes pain & neurologic complaints.
- In complex cases ask if psych AME/QME considers applicant to be a good candidate for voc rehab & as a prospective employee.

COMPENSABLE CONSEQUENCE PSYCH INJURIES

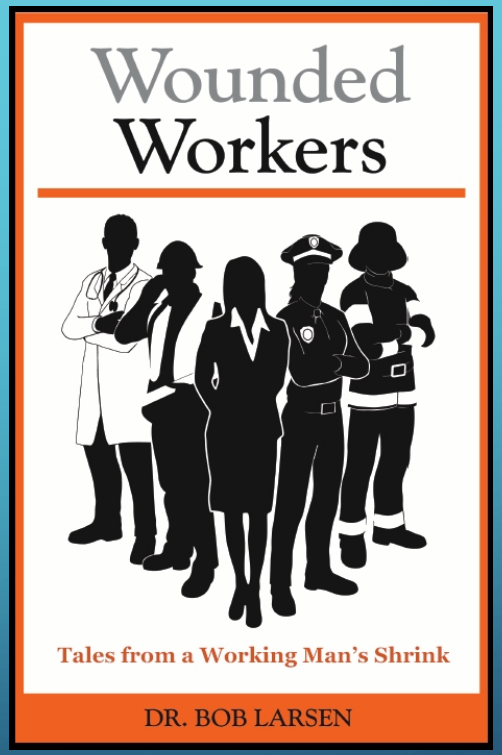
- No additional psych p.d. for injuries post 1/1/13 unless violent act or "catastrophic" physical injury.
- Examples of catastrophic injury per Labor Code: loss of limb, paralysis, severe burn & severe head injury.
- 2019 WCAB en banc decision defines catastrophic injury.

WILSON V. STATE OF CA & SCIF, 2019

- Firefighter with serious pulmonary, neurologic & vision injuries following smoke inhalation n/exposure during wildfire.
- Psych P.D. allowed for PTSD & Depression after determination of catastrophic physical injury.
- "Factors" relied upon by WCAB for finding of catastrophic physical injury:
  - Reasonable treatment required.
  - Outcome when physical injury is P & S.
  - Severity of physical injury & impact on ADLs.
  - Physical injury is analogous to 4 injuries specified in L. C.
  - Physical injury is incurable & progressive.

I AM UNLOVABLE

Lab worker with amputation injury, PTSD and cartoon-like prosthesis.



LET'S GO FLY A "KITE"

- Cases where physical & mental impairments added together or combined thru use of the CVC.
- KITE v. ATHEN'S ADMINISTRATORS, 2013
  - Forklift operator with bilateral hip injuries of 20% WPI each.
  - QME describes "synergistic effect" with no good hip to compensate for injured hip.
  - Addition method used as found to be more "accurate" than use of CVC for rating.

DEPT OF CORRECTIONS & REHAB V. WCAB (FITZPATRICK)

- Substantial medical evidence required to justify addition as more “accurate”, not fair or generous, rating.
- At odds with 2005 PDRS as “guide.”
- Kite cited LeCornu which involved 1997 PDRS; also analogized CVC to Multiple Disabilities Table. Court of Appeals disagreed with Kite.
- Fitzpatrick challenges the decision & analysis of Kite.

DR. BOB'S TAKE HOME MESSAGES

- Kite & its progeny (e.g. Barelo, Diaz, Taina) at odds with legislative intent of SB899 for consistency & objectivity in disability rating determination.
- Use of CVC is presumed correct, yet rebuttable.
- QME/AME must provide "substantial medical evidence" to find "synergistic effect" of impairments for addition method to result in more "accurate" rating.

FINALLY, WHERE DOES THIS THE LEAVE AME/QMES?

- Until precedent case which is binding comes forth on P.D. rating, issue opinions with substantial medical evidence as to why multiple impairments:
  - Don't overlap,
  - Result in negative synergistic effect,
  - Allow addition method to produce more accurate rating than use of CVC.
- For compensable consequence psych injuries:
  - Be aware of factors detailed in Wilson that allow physical injury to be considered "catastrophic" with resultant add-on for psych P.D. This affects workers with the most serious injuries.
- Consider more than GAF in cases of combined physical and mental injury, especially amongst those most seriously injured.

FOLLOW UP WITH DR. BOB

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WOUNDED WORKERS

Website:
https://www.workingmansshrink.com